

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

GARY M. FERRELL, Petitioner

vs.) **No. 11-0382** (BOR Appeal No. 2045026)
(Claim No. 2008018596)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BLACKDOG BUILDERS, LLC, Respondent**

MEMORANDUM DECISION

Petitioner Gary M. Ferrell, by George Zivkovich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Blackdog Builders, LLC, by James W. Heslep, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 7, 2011, in which the Board affirmed an August 31, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Ferrell's request to reopen his claim for additional temporary total disability benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Mr. Ferrell received a compensable injury while working as a carpenter. The claims administrator granted temporary total disability benefits for four months from November of 2007 through March of 2008. The claim was closed in May of 2008 when the claims administrator found that it received no medical evidence showing a continuing total disability. In that order, the claims administrator noted that Mr. Ferrell is "still eligible for medical services related to this injury."

Upon seeking to reopen his claim for additional temporary total disability benefit award, the claims administrator requested medical evidence showing a worsening or aggravation of his condition but Mr. Ferrell never provided the requested medical evidence. The Office of Judges affirmed the claims administrator's Order in its August of 2010 Order, finding that Mr. Ferrell did not allege any specific dates that he had again become unable to work due to the compensable injury. Additionally, the Office of Judges found that Mr. Ferrell indicated that he was actually seeking treatment, not temporary total disability benefits, which could be pursued in a different manner. The Board of Review reached the same conclusions as the Office of Judges in its February of 2011 Order.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: October 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh